

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (2000 State Bar Edition). (This is a GIL.)

October 8, 2003

Dear Xxxxx:

This letter is in response to your letter dated August 5, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

It is requested that we be furnished written confirmation as to the correct application of sales and/or use tax on digitally downloaded media, such as music, movies, and/or digital photographs. Upon purchase, digital media would be electronically downloaded to the customer's individual Personal Computer via the Internet, with no tangible product changing hands at the time of the download or in the future. Once the digital download is completed, the customer has the option of installing the downloaded information on their hard drive, or copying the downloaded information to portable physical media such as digital CD's, digital tapes, digital video, etc.

1. Is the purchase of electronically downloaded media such as music, movies, and/or digital photographs subject to sales tax in your state?
2. If taxable, how is the taxability location for state and/or local taxes determined? In some instances, we may have only a billing address and not the address where the digital media item is actually being downloaded or being used.

Your prompt response is appreciated. Thank you for your assistance in this matter.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (2000 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (2000 State Bar Edition).

In the situation you describe, the downloading of digital media, tangible personal property is not transferred. Therefore, sales tax is not incurred. See 86 Ill. Adm. Code 130.2105.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk